



Governor's 2012 Task Force on the Study of Kentucky's Alcoholic Beverage Control Laws

Public Safety Committee Meeting – September 11, 2012

**Committee Chair – Danny Reed, Distilled Spirits Administrator,
Kentucky Department of Alcoholic Beverage Control**

Minutes

A meeting of the Governor's Task Force **Public Safety Committee** was held September 11, 2012 at 1:00 p.m. at the offices of the Department for Local Government, 1024 Capital Center Dr., Ste. 340, Frankfort, Kentucky.

Opening Remarks: Committee Chair Danny Reed called the meeting to order and asked for a moment of silence in honor of the victims and their families and the first responders of 9/11/01. Chairman Reed advised the four topics of discussion at today's meeting will be disorderly premises, effective ways to prevent sales to minors, mandatory training, and medical amnesty. Additional materials were distributed to committee members containing information for review, such as responses to questionnaires sent to other states relating to disorderly premises statutes; a copy of the Hofbrauhaus Newport, LLC v. Commonwealth of Kentucky; a draft revision suggestion to KRS 244.120; responses to questionnaires sent to other states relating to criminal penalties when a sale to a minor occurs; and articles and other information relating to medical amnesty issues. Chairman Reed would like participation and input, as a consensus much be reached on ideas and recommendations this committee makes to the Task Force.

Roll Call:

Committee Members Present: – Chairman Danny Reed, ABC Distilled Spirits Administrator; Tony Dehner, Commissioner, Ky. ABC; Stephanie Stumbo, ABC Malt Beverage Administrator; Bob Vance, Secretary Public Protection; John Harris, KBWA; Eric Gregory, KDA; Dan Meyer, WSWA;

Committee Members Absent: –Larry Bond, Chief of Staff – Office of the Governor; Frank Harris, Director – MADD; and Representative Keene,

Others Non-Member Participants Present: Steve Humphress, General Counsel, Kentucky ABC; Rick Schad, Ky. Office of Highway Safety - (for William Bell); Bert May, KLC; Roger Leasor, Tres. KABR; Tara McGuire, Bluegrass Regional Prevention Ct. – State alcohol PES; Tim McGurk, Kroger; Jason Trudeau KBWA; Russ Woodward, AB; Jennifer Doering, KMBC; Neil Willinghurst, Ky. Retail Federation; Gene McLean, Ex. Dir., KBWA; John Clay, Retired ABC Commissioner; Tom Bozarth, Mayor City of Midway, KLC; Angela Criswell,

General Public; Jason Underwood, Buffalo Trace Distillers; Lt. J. Wise, KSP; Bryce Amburgey, LRC; Heather Parrino, U of L BRICC Coalition; Bill Patrick, Ky. Co. Atty's Assoc.; John Harris, KBWA; David Smith, Attorney, Ky. ABC; and Gay Dwyer, KRA.



Approval of Minutes: Chairman Reed called for any edits to the minutes of the August 29, 2012, meeting. There being no edits, he called for a motion to approve. The motion carried and the minutes were approved by the committee members.

Disorderly Premises: Mike Razor, Director of Enforcement, Kentucky ABC, discussed the questionnaire responses received from other states relating to their respective disorderly premises statutes. Director Razor spoke about the Hofbrahaus Newport, LLC vs. Commonwealth of Kentucky and its relation to the flaw in Kentucky's disorderly premises statute, which currently does not include the word "employee(s)" or "staff" of a licensed premises. Kentucky needs to amend their statute that holds the licensee responsible for maintaining orderly premises. A draft of a suggested amendment to Kentucky's statute was distributed to committee members for review and for comparison to the other states' disorderly premises statutes. Director Razor and Steve Humphress opined that the proposed amendment would have addressed a portion of the Hofbrahaus case in Ky. ABC's favor. Dan Meyer agreed that servants, employees, and agents should be held to higher standards. Steve Humphress recommends adding specific conducts or acts to the definition of "disorderly." The current lists Dan Meyer recommended adding criminal activity on the premises to the conducts in the definition of "disorderly." Chairman Reed asked committee members to work on this issue prior to the next meeting. Lieutenant Wise questioned leased facilities and the regulatory authority to enforce the disorderly statute at such. Chairman Reed feels this gets into temporary licensing issues. Administrator Stumbo suggested many of those instances no licenses are issued and are just private events at which alcoholic beverages are served; therefore no administrative charges are authorized.

Effective Ways to Prevent Sales of Alcoholic Beverage to Minors and Possession of Alcohol by Minors: Director Razor reviewed information solicited from other states relating to statutes addressing this issue. During the research, Director Razor and his staff focused on Vermont's statutes—Title 7 and found it to be very comprehensive and extraordinarily effective.

Vermont - Key elements in the effectiveness of the Penalties section of Vermont's law relating to minors are:

- Persons under age 21 cited for alcohol related violations follow a "civil path" to avoid a criminal record;
 - o Notice of violation is issued – similar to Kentucky
 - o Minor enters civil path and work with a diversion board
 - o Minors must complete alcohol education and counseling courses
 - Costs are at the violators' expense



- Failure to complete education is 90-day driver's license suspension
- Transportation Dept. governs and enforces these license suspensions
 - After completion of all portions of civil path, charges are dismissed and criminal record is clear

If minors choose not to participate or fail to complete the civil path, they are forced into the criminal path and are penalized according to Vermont's Title 7.

Alaska: Roger Leasor reported that Alaska has a very aggressive civil program for minors attempting to buy alcoholic beverages.

- Retailers who feel compromised by the minors attempt to buy, they are allowed to file a lawsuit
 - Parents then have to become involved
 - Proceeds from civil suits are used as a bounty for their enforcement personnel in stores and bars
 - Initial costs for the lawsuits are on the retailer but it is recovered in the end

Roger will follow up with more information from Alaska prior to the next meeting.

Steve Humphress stated retailers are frustrated because they are held responsible and the minor doesn't get the bigger penalty. Kentucky ABC's only authority against minors and clerks is criminal citations. Courts give diversion in most cases, so minors don't seem to care. Although this is a big problem, is a civil penalty similar to what Alaska imposes something this committee can address successfully? Steve Humphress agreed to do a summary of both Alaska and Vermont's statutes and penalties relating to minors purchasing or possessing alcoholic beverages and their penalties.

In 2011 Kentucky ABC cited 435 minors in possession (persons 20 years of age and younger) while conducting Targeted Enforcement Details (TED).

Criminal penalties - KSP reported that the Juvenile Code (anyone under age 18) is used -KRS 600. Juveniles go thru CDW. The gray area is between 18 and 21 years of age. Civil penalties would not work with the Juvenile Code.

Mandatory Server Training – Sandra Watts, Alcoholic Beverage Control's Education Branch Manager followed up on the idea of mandatory server training details. Two thirds of Kentucky's Server Training in Alcohol Regulations (S.T.A.R.) program is state specific. Although there are several different programs used throughout the state, if mandated training passed, other programs should include a "state specific" piece similar to S.T.A.R., as laws differ from state to state. 57 locations have ordinances in place that require some type of server training. Half of those locations track training and the other half doesn't. Have an umbrella that allows consistency. Would state mandated training be beneficial to Kentucky? With a state mandate, local ordinances would probably not be enforced. Gay Dwyer reported that the restaurant industry will maintain opposition to state mandated training.



While that industry advocates training of their personnel, restaurant corporations with multiple locations in multiple states do their own training as part of their overall employee training program. Some do use S.T.A.R. and other programs offered in the state. Gay was asked if the restaurant industry would be more inclined to support statewide mandatory training if those corporations which have their own training programs would be exempt. She explained that she would be happy to discuss the matter with her industry. Angela Criswell noted that a responsible server training addresses over service and benefits new servers who are new to the industry. Also, statewide mandated training would create an incentive for servers to market themselves. Data shows that DUI cases studied showed that in most cases the intoxicated driver had not been served at an establishment where servers had been trained.

Secretary Vance advised that if there is not a consensus on the statewide mandatory training issue, then it will not be recommended to the Task Force or ultimately the Governor.

Dan Meyer questioned the authority of local governments to be able to impose restrictions on alcoholic beverage licenses unless there is specific authorization in the state statute. Under what authority are they requiring alcohol servers to be trained? Steve Humphress opined they are likely using their home rule authority under KRS chapter 65 and 81, which have not been challenged.

Tom Bozarth questioned the expense of statewide mandated training and who would absorb that expense.

Heather Parrino – U of L BRICC Coalition – Building Resiliency In Campus and Community – spoke about the state-wide partnership to reduce high risk drinking. NIAAA and NREPP were referenced as sources for data. The Task Force goals are in line with many of the BRICC Coalition and state-wide partnership goals. It is still important to look at prevention strategies and provide support and be more proactive with providing resources. Prevention strategies can include mandatory trainings. Alcohol Edu and Parent Edu, are evidence based online programs available online and are programs which provide additional data for other states. It is important to look at prevention rather than focus mainly on enforcement and treatment.

KSP Lieutenant Wise questioned whether pills or other substances besides alcohol are incorporated in either of these programs.

Medical Amnesty:

Indiana has a medical amnesty law. A medical amnesty bill would not likely be controversial. If Kentucky had similar legislation, it would allow a person to seek immediate medical assistance for someone underage that they know is suffering from alcohol intoxication or drugs, without the fear of criminal penalties. Gene McLean shared a story of a family that had dealt with an incident that medical amnesty may have changed.



Five states have enacted medical amnesty laws. A brief summary of each of these was distributed for review. Chairman Reed asked the committee members to take a look at these and determine if Kentucky could create a bill similar. It was noted that Pennsylvania's law could be a good model. Secretary Vance suggested adding drugs to any draft medical amnesty bill this committee may submit. It was noted that adding drugs to the issue could kill the bill, but could also help the bill. This matter will be discussed further at the next meeting.

Committee Assignments: Committee members and participants were asked to review the materials distributed and compare other states' information provided, examine issues identified as problems and prepare to discuss these at the next meeting.

Next Meeting Date(s): A recommendation was made at the Licensing Committee meeting that the Licensing Committee will now have the standing meeting time of 1:00 p.m. and the Public Safety Committee will have a standing meeting time 10:30 a.m. There were no objections.

The next meeting of the Public Safety Committee will be Tuesday, October 9, 2012 **AT A NEW TIME** of 10:30 a.m. – 12:00 p.m. at the offices of the Department for Local Government, 1024 Capital Center Dr., Ste. 340, Frankfort, Kentucky.

Member Input: No further member input or comments.

Adjournment: The Public Safety meeting was adjourned at 2:35 p.m.